

Dear Trustees,

You have requested our opinion as to the COLA and DROP benefits to which certain members are entitled under Ordinances 2015-304-E and 2017-259. For the reasons and based upon our understanding of the facts set forth below, we are of the opinion that members who reached eligibility for time service retirement under Section 121.201 of the plan during the period beginning June 19, 2015 and ending October 1, 2017, are entitled to make a one-time, irrevocable election to receive the COLA (and DROP if the member enters or has entered the DROP) benefits provided under Ordinance 2015-304-E or the COLA (and DROP) benefits provided under Ordinance 2017-259.

Our opinion is based upon the following understanding of the facts. In Ordinance 2015-304-E, the City divided the DROP benefits under Section 121.209 of the plan into two tiers, effective June 19, 2015. For members with 20 or more years of creditable service as of the effective date of the 2015 Ordinance, the DROP interest rate continued to be 8.40% per year. Members with less than 20 years of creditable service as of the effective date of the Ordinance were upon entry into the DROP entitled to the money-weighted rate of return shown in the plan's most recent audited financial statements, from a minimum of 2.0% to a maximum of 14.4%

Ordinance 2015-304E also changed the COLA benefit. For members with 20 or more years of creditable service as of the effective date of the Ordinance, the COLA benefit was three percent. Members with fewer than 20 years of creditable service as of the effective date of the ordinance were entitled to a COLA of three percent of the portion of the accrued benefit based on credited service prior to the effective date of the Ordinance, plus, for service after the ordinance's effective date, the Social Security COLA, but not to exceed six percent.

Ordinance 2017-259 eliminated the two-tier benefit structure, providing for a fixed DROP interest rate of 8.40%, and a fixed COLA of 3%.

With regard to members who became eligible for time service retirement during the effective period of Ordinance 2015-304-E, and who retired during that period, the plan paid the COLA and DROP benefits provided under the 2015 ordinance for all periods prior to October 1, 2017, and has paid the COLA and DROP benefits provided under the 2017 ordinance for all periods following the effective date thereof.

The question is what benefits apply to a member who reached eligibility for time service retirement under Section 121.201 of the plan after the effective date of Ordinance 2015-304-E but prior to the effective date of Ordinance 2017-259. It is our opinion that upon retirement, all such members are entitled to make a one-time, irrevocable election to receive the COLA and DROP benefits provided in Ordinance 2015-304-E or the COLA and DROP benefits provided in Ordinance 2017-259. Members who have already retired (including by entering the DROP), are entitled to make a retroactive election.

Under Section 411 of the Internal Revenue Code as it applies to governmental plans, a participant's accrued benefit under the plan must be treated as non-forfeitable upon the

participant's attainment of the plan's normal retirement age.¹ Accordingly, if a member reaches normal retirement age and continues working, his or her accrued benefit cannot be reduced by a plan amendment that becomes effective between the date upon which the member reached normal retirement age and the date of the member's retirement. For our purposes, normal retirement age means the date upon which a member becomes eligible for time service retirement under Section 121.201 of the plan, whether or not the member retired or entered the DROP.

In the context of the COLA and DROP benefits under our Plan, Section 411 means that the COLA and DROP benefits of a member who became eligible for time service retirement during the effective period of Ordinance 2015-304-E cannot be reduced by the provisions of Ordinance 2017-259.

Certain members thus situated may prefer the COLA (and DROP if the member enters the DROP) benefits under Ordinance 2015-304-E to those provided under Ordinance 2017-259. Since the plan cannot reduce the benefit that was in effect when the member reached eligibility for time service retirement, it is our opinion that any such member should be offered a one-time, irrevocable election to receive either the COLA (and DROP if the member enters the DROP) benefits provided under Ordinance 2017-259, or the COLA (and DROP) benefits provided under Ordinance 2015-304-E.

We recommend, therefore, the following plan of action.

- That this matter be placed on the agenda for the upcoming meeting under the heading, "COLA and DROP benefits for participants who reached eligibility for time service retirement between June 9, 2015 and September 30, 2017, and who retired (including by entering the DROP) on or after October 1, 2017";
- That the administrator identify any members who fall within the aforementioned parameters;
- That our office and the Office of General Counsel prepare for the administrator's review, a one-time, irrevocable election form to be executed by the identified members;
- That the actuary determine the amount of any interest owed to, or due from, any member whose election effectuates a change in the member's benefits, and that the accounts of any such member be adjusted accordingly.

We look forward to discussing this matter with you during your upcoming meeting.

¹ See Revenue Rulings 66-11, 68-302 and IRS Publication 778.